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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-372

HERBERT HARVEY,
Petitioner,

vs.

EMILE W. SAULNIER, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF IN OPPOSITION

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Statement of the Case

The facts leading up to the Judgment rendered by the United States Court of Appeals for the Third Circuit (Petitioner's Appendix, p. 30a) are set forth in *Bron* v. *Weintraub,* 42 N. J. 876 (1964), (Petitioner's Appendix, p. 1a-11a) together with the opinion of the District Court denying Petitioner's motion for summary judgment (Harvey Appendix, p. 21a-24a) and the opinion of the

District Court granting quiet title to Respondents (Petitioner's Appendix, p. 25a-29a).

Respondents disagree with the basic premise of Petitioner's contention that he was denied due process by the Courts of the State of New Jersey and by the Federal Courts. On the contrary, the facts expressed in the abovementioned opinions demonstrate beyond a doubt that Petitioner was accorded the fullest due process of law in both the State and Federal Courts. To say that Petitioner had his day in court would be a gross understatement—that he has had a great many days in court would be closer to the reality. Petitioner has used these innumerable days in court to harass the Respondents by prolonging the uncertainty in respect of the titles to their respective homes and by subjecting them to such multiplicity of litigation which might, except for the special circumstances of this case, have subjected them to a near-bankrupting spate of litigation fees and expenses or compelled them to settle and pay the Petitioner his money demands to avoid said fees and expenses.

Preliminary Statement

The necessity for Respondents to reply to Mr. Herbert Harvey's petition for a Writ of Certiorari represents still another sad chapter in Harvey's continuing harassment of the Respondents and his continuing efforts to avoid the consequences of the New Jersey Supreme Court's decision in *Bron* v. *Weintraub,* 42 N. J. 87 (1964), judgment upon remand affirmed, 45 N. J. 1 (1965). It is outrageous that these Respondents are still insecure in their respective titles to their homes, eight years after the Courts of New Jersey decided that Harvey and his associates have no estate, interest or right in, or lien or

encumbrance upon the lands and premises of the Respondents. *Bron* v. *Weintraub*, judgment upon remand, affirmed 45 N. J. 1 (1965). This honorable Court declined to review the decision. *Harvey* v. *Lyons, et als.*, cert. denied, 382 U. S. 918 (1965), pet. for rehearing denied, 382 U. S. 1003 (1965).

Since the above decisions, Harvey has attempted to circumvent their effect by taking advantage of technicalities and appearing in court in various guises. In the instant case, he appears as an alleged mortgagee of Hudson Trading Corp. attempting to reassert interests in Respondents' properties which were long ago declared to be null and void. Because the United States Court of Appeals for the Third Circuit affirmed the decision of the Federal District Court, penetrating Harvey's transparent attempt to avoid the consequences of *Bron* v. *Weintraub, supra,* Harvey has instituted the present petition for a writ of certiorari. Unfortunately, the Respondents herein, who should have been free of Herbert Harvey's machinations years ago, continue to suffer because of his exploitation of the judicial process and his arbitrary refusal to accept the prior binding decisions of the State and Federal Courts.

In its original opinion, *Bron* v. *Weintraub, supra,* the Supreme Court of New Jersey declared that "Hudson and Altomare, having acquired the outstanding title under 'circumstances which render it unconscientious for the holder of legal title to retain and enjoy the beneficial interest, equity impresses a constructive trust on the property thus acquired in favor of the one who is truly and equitably entitled to the same'." 42 N. J. at page 96. The Court ordered that the householders (Respondents herein) were equitably entitled to the property upon reimbursement of the monies paid to the Weintraub heirs with interest.

The Supreme Court of New Jersey did not base its decision solely on the equities involved, but rather based its decision on public policy which, the Court stated, was to support tax titles—"a policy which overall is burdened by the conduct before us." 42 N. J. at page 95. The Court was not challenging the right of existing interests to convey to third persons, but rather condemned the intrusion upon the scene of third persons who sought only to further their own interests, rather than the interests already on hand. Referring to the damage resulting from such intrusions, the Court stated:

> "The burden upon individuals situated as are the householders in this case is evident enough. These manifest hurts should not be tolerated unless it can be said that some other legitimate interest or advantage is served. We find none. We see no social value or contribution in the activities of Hudson. On the contrary, decent men must sense only revulsion in this traffic in the misfortunes of others." 42 N. J. at 95.

Were this Court to grant certiorari and hold that Harvey has a valid mortgage lien upon the property owned by Respondents, it is submitted that the public policy supporting tax titles would be thwarted and individuals such as Harvey would be encouraged to continue their title-raiding activities which skirt the borderline of legality and offend the morality of decent men. Rather, certiorari should be denied, so that these innocent householders will finally have the peace and comfort of knowing that the titles to their homes are secure and to demonstrate that these title-raiders cannot use the law to further their nefarious purposes, no matter how ingenious their schemes may be.

Statement of Reasons in Opposition to Petition for a Writ of Certiorari

1. There are no constitutional rights involved warranting the granting of a petition for a writ of certiorari.
2. The law favors an end to litigation and a denial of the petition will serve to end the harassment of Respondent by Petitioner.

POINT I

There are no constitutional rights involved warranting the granting of a petition for a writ of certiorari.

The "constitutional question" propounded by the Petitioner consists of an assertion that Petitioner was denied due process of law in both the State and Federal Courts. Petitioner bases this assertion on his claim that the Supreme Court of New Jersey denied him due process. Respondents respectfully suggest that, assuming *arguendo* that such a denial occurred, it took place over eight years ago—and Petitioner's time to petition for a writ of certiorari has long since expired. In spite of this, Harvey has simply refused to accept the authority of this decision, and has come back to both the State and Federal Courts many times during the past eight years—each time claiming that the decision in favor of the householders constituted persecution of him and his title-raiding activities. Each court in turn has stripped Harvey of his cloak of martyrdom and has labeled him the persecutor (rather than the persecuted) of both the householders and the Courts.

Throughout his petition, Harvey seeks to divorce himself from the activities of his corporate alter ego and

would have the Court believe that he was not in control of the litigation which has preceded this petition. The facts support the conclusion that Harvey was a party in a real sense to the proceedings and, accordingly, is bound by the Amended Final Judgment specifically divesting him of all interest in the properties owned by the Respondents. If Harvey had any quarrel with the Amended Final Judgment, he could have petitioned this Court for relief eight years ago. However, even though Harvey *himself* petitioned this Court in *Harvey* v. *Lyons,* 382 U. S. 918 (1965), he did not raise the issue of "divestment of property without due process."

Although Harvey has tried to hide the equities of this matter behind an avalanche of obscure legal cavil, there is no doubt of the eminent fairness of the decisions of both the State and Federal Courts. The denial of certification in *Harvey* v. *Lyons,* 382 U. S. 918 (1965), settled once and for all the judgment that Hudson, Altomare and Harvey never held title to the properties of the Respondents; rather, Hudson and Altomare held title in constructive trust for the Respondents herein and Harvey had no interest at all. Since Harvey appears before this Court solely as an alleged mortgagee under a mortgage on after-acquired property given to him by Hudson, he has no interest in the properties of the Respondents, for, as stated above, it has been decided that Hudson never "acquired" title to these properties. As stated by Judge Whipple in his opinion, "This is the legal effect of the imposition of the constructive trust" (Petitioner's Appendix, p. 29a). Moreover, it needs no citation that a mortgagee acquires no better title than his mortgagor in whose shoes he stands. And it has been specifically held that a mortgage on after-acquired property attaches only to such interest as the mortgagor acquires. In re *New York,*

S. & W. R. Co., 109 F. 2d 988 (3rd Circuit, 1940), cert. denied, *New York Trust Co.* v. *New York, S. & W. R. Co.*, 310 U. S. 633, *Knickerbocker Trust Co.* v. *Carteret Steel Co.*, 79 N. J. Eq. 501 (Ch. 1912).

Thus, whether or not the Amended Final Judgment specifically divested Harvey, he lost all of his interest as mortgagee of Respondents' properties (which is the only interest he asserts before this Court) by virtue of the decision that Hudson never acquired any title in its own right but rather held the interest of the Weintraub heirs as a constructive trustee for the Respondents.

POINT II

The law favors an end to litigation and a denial of the Petition will serve to end the harassment of Respondents by Petitioner.

Counsel for Respondents believes that no useful purpose would be served by a detailed rehashing of the facts and the law of the instant case or by a meticulous attention to any discrepancies in the Petitioner's brief or a rebuttal of the technicalities raised by the Petitioner. The trials and tribulations of the ten householder couples may best be viewed as a sea journey.

The ten householders set sail upon a journey across the judicial seas some 13 years ago in search of a solution to the title problem which had beset their homes. Soon after the journey began, there appeared upon the horizon a marauding vessel captained by Herbert Harvey, the title-raider, as the New Jersey Supreme Court termed him. He attacked the titles of the householders and has persisted in these attacks to date. Every time it ap-

peared that the householders had reached safe harbor and found a solution to their problem either by virtue of an opinion of the New Jersey Supreme Court or a denial of a writ of certiorari by the United States Supreme Court or other decisions of the Federal Courts, this title-raider has taken up the attack from another vantage point and has driven the householders back onto the storm-tossed open seas.

Now it appears that this title-raider has permitted seven of the ten householders to disembark safely ashore (hopefully secure from any further harassment resulting from his nefarious dealings). Whatever distinctions he may seek to make before this Court between the aforementioned seven householders and the remaining three householders, can only be without a difference since they were all in the same boat and their causes are equally meritorious. Further, the times for him to appeal from the various prior decisions which have cut off his interest in the householders' properties, as a mortgagee or otherwise, have long since expired but the travail of the remaining householders is not yet at an end.

Accordingly, counsel respectfully requests that this honorable court deny the petition for a writ of certiorari so as to finally defeat this marauder of the judicial seven seas and permit the remaining householders to find a safe haven secure in their homes, the titles to which have been made safe from further attacks by the Petitioner.

CONCLUSION

It is respectfully urged that for the reasons set forth, this Court should deny Petitioner's petition for a writ of certiorari.

Respectfully submitted,

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